**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**O.O.C.J.**
NOTICE OF MOTION NO. 3423 OF 2005
IN
APPEAL NO. 69 OF 1994
IN
NOTICE OF MOTION NO.932 OF 1991
IN
SUIT NO. 1212 OF 1991

Narayan Manik Patil & ors. ... Appellants

Versus

Jaywant J. Patil and Ors. ... Respondents

And

Bafna Charitable Trust and Ors. ... Applicants

And

The Court Receiver, High Court, ... Respondents

Mr. N.K. Mudnaney for Appellants.

Mr. K. Dalal i/by Kishore Dalal & Co. for R. No. 1.

Mr. Vineet B. Naik with Mr. V. Katawala i/by Vivek Kantawala & Co. for Applicant in Support of Notice of Motion No. 3423 of 2005.

Mr. D.R. Patil, representative of the Court Receiver present.

**CORAM : F.I. REBELLO &**
**MRS ROSHAN DALVI.JJ.**
**DATED : DECEMBER 22, 2005**

P.C.

. This motion by the applicant has been taken out purportedly based on the order passed in Appeal No. 69 of 1994 in Notice of Motion No. 932 of 1991 in

Suit No. 1212 of 1991. The Plaintiff had sought appointment of court receiver and injunction and certain other reliefs. That came to be dismissed by order dated 4.1.1994. An appeal came to be preferred against that order being Appeal No. 69 of 1994. The suit was in respect of the immovable properties situated at Nahur Village and described in Exh. E to the plaint. The Appellate Bench vide order dated 20.4.1995 allowed the appeal and granted interim relief namely appointment of the Court Receiver, High Court, Bombay in respect of the properties mentioned in part of Exh. A to the plaint.

. The appellants herein filed an application in the suit, opposing appointment of the Receiver and contended that the properties bearing Survey No. 151A and 77 at village Nahur belongs to them and therefore, Receiver should be discharged. The notice of Motion was numbered as Notice of Motion No. 3479 of 2004 in Suit No. 1212 of 1991. A learned Judge of this court by order dated 17.2.2005 was pleased to grant ad interim relief in terms of Prayer Clause (c) with further

clarification that order would not affect the survey, if any, which is alleged to have been carried out. The Original plaintiffs aggrieved preferred appeal before this court being Appeal No. 572 of 2005. That appeal came to be disposed of by order dated 8.8.2005. In other words, the ad interim order dated 17.2.2005 was continued to operate. When the matter came up before the learned Single Judge for final hearing, the learned counsel for the Applicants was pleased to withdraw the application with liberty to adopt appropriate proceedings. It is based on this that the present application has been filed.

. At the hearing of this motion, the counsel for the applicants was asked as to how the present motion was maintainable, as any application by third parties in a pending suit has to be filed in the suit and more so as the appeal in which Receiver has been appointed, which was against the interim order has been disposed of.

. The Code of Civil Procedure contemplates that the procedure for applications is the same as

procedure for suits. The learned counsel for the Applicants submit that they withdrew their application based on wrong legal advice and in their opinion the proper procedure is to prefer application in the suit itself considering that the applicants were not parties to the suit and that they were opposing appointment of Receiver in respect of properties which they claim right and are in possession. The other parties to the proceedings have also been heard.

. Considering the above, in the exercise of our inherent powers under Section 151 of the Code of Civil Procedure, the learned counsel for the Applicant is allowed to withdraw their statement made on 28.10.2005 in order to avoid multiplicity of proceedings. Notice of motion which was withdrawn stands restored. Ad interim order passed on 17.2.2005 and as maintained by order dated 8.8.2005 is restored pending hearing and final disposal of the notice of motion.

. The learned counsel for the parties to move the learned Single Judge for hearing the motion. The

learned Judge on such application being made to consider the plea for early hearing consider the earlier order made on 8.8.2005.

. With the above observations, motion stands disposed of.

**(F.I. REBELLO,J.)**

(MRS. ROSHAN DALVI,J.)